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6 IN THE UNITED STATES DISTRICT COURT
7 FOR THE DISTRICT OF ARIZONA
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9 Michael Gallegos,
10 Petitioner,

11 v.

12 David Shinn, et al.,
13 Respondents.
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No. CV-01-01909-PHX-NVW

ORDER

DEATH PENALTY ORDER

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16 Before the Court is Petitioner Michael Gallegos’s Motion to Present Testimony of
17 Expert Witnesses Via Video-Teleconferencing, filed October 1, 2020. (Doc. 209.) Citing
18 the COVID-19 pandemic, Gallegos asks the Court to permit his expert witnesses to testify
19 by video at the evidentiary hearing set for November 9, 2020. (*Id.*)

20 Gallegos asserts that Dr. Fassler, Dr. Reschly, and attorney Garrett Simpson “are
21 unable to travel or testify in-person at the evidentiary hearing due to health risks posed
22 by the ongoing pandemic.” (*Id.* at 6–7.) Gallegos indicates that Dr. Fassler “lives and
23 works with people in high risk categories” and that Dr. Reschly and Simpson are at risk
24 because of their age and Simpson’s high blood pressure. (*Id.*) Gallegos states that his
25 remaining expert witness, Dr. Heilbronner, is willing to travel to Arizona to testify in
26 person but would prefer to testify by video “if the current COVID-19 situation worsens.”
27 (*Id.* at 6.) Drs. Heilbronner, Fassler, and Reshly are located out of state; Heilbronner in
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1 Illinois, Fassler in Vermont, and Reschly in Tennessee. (*Id.* at 6–7.) Respondents do not
 2 oppose Gallegos’s request for video testimony. (*Id.* at 7.)

3 On October 15, 2020, the parties filed their Joint Proposed Prehearing Order. (Doc.
 4 217.) The order contains the parties’ witness lists. (*Id.* at 29–38.) Gallegos’s list does
 5 not include attorney Simpson. (*Id.*) Given Simpson’s absence from the witness list, the
 6 Court assumes he will no longer be testifying at the evidentiary hearing.


7 Because of the stated risks from the COVID-19 pandemic, the Court will permit
 8 Drs. Fassler and Reschly to testify via video-teleconference. Dr. Heilbrunner, however,
 9 will be required to testify in person. He is able and willing to travel. In addition, it is
 10 now apparent that his testimony will be contested by Respondents’ expert, Dr. Boake,
 11 who will testify in person. (*See* Doc. 212-1, Ex. 1 at 5, 7–10.) As the Court previously
 12 indicated, “if the case turns on hotly disputed expert testimony, probing cross-
 13 examination may be critical, which can be much more effective in live testimony.” (Doc.
 14 199 at 7.)

15 Accordingly,

16 **IT IS HEREBY ORDERED** that Gallegos’s motion (Doc. 209) is granted in part
 17 as follows:

- 18 1. Drs. Fassler and Reschly will be permitted to testify via video-
 19 teleconference. Gallegos’s counsel are directed to make the arrangements
 20 for that testimony.
- 21 2. Dr. Heilbrunner will be required to testify in person.
- 22 3. The motion is denied as moot with respect to attorney Simpson.

23 Dated this 19th day of October, 2020.

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 27 Neil V. Wake
 28 Senior United States District Judge